

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
LONG PAINTING COMPANY, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 82-198

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.15(a) of respondent's Regulation I, came before the Pollution Control Hearings Board; Gayle Rothrock, Chairman, David Akana and Lawrence J. Faulk, Board members, with Lawrence J. Faulk presiding at an informal hearing in Lacey, Washington, on January 11, 1983.

Respondent was represented by its attorney Keith D. McGoffin; appellant Long Painting Company, Inc., was represented by Michel L. Cole, Vice President of Long Painting Company. The proceedings were

1 | electronically recorded.

2 |       Having heard the testimony, having examined the exhibits, and  
3 | having considered the contentions of the parties, the Board makes these

4 |                               FINDINGS OF FACT

5 |                               I

6 |       On October 18, 1982, at about 10:41 a.m. respondent's inspector  
7 | observed Long Painting Company's operations on U. S. Oil and Refining  
8 | Company property at 3001 Marshall Avenue, Tacoma, Pierce County. The  
9 | inspector's vantage point was approximately 300 feet northeast of an  
10 | abrasive blasting operation. He observed the operation for  
11 | approximately 25 minutes.

12 |       During that time, two men were abrasive blasting a vacuum tower  
13 | approximately 16 feet diameter by 40 feet long. The inspector  
14 | observed dust emissions, visible 25 feet from the blasting operation,  
15 | which indicated particulate matter was becoming airborne and being  
16 | suspended in the ambient air.

17 |       He also observed that emissions were particularly heavy when the  
18 | insulation rings and the ends of the vessel were blasted. During his  
19 | observation no precautions were noted that would have prevented the  
20 | particulate matter from becoming airborne.

21 |                               II

22 |       The inspector then contacted U. S. Oil and Refining Company on  
23 | October 18, 1982, at approximately 11:00 a.m. He was denied entry by  
24 | Al Cabodi, chief engineer for U. S. Oil and Refining Company. The  
25 | inspector notified U. S. Oil and Refining Company of his observations

26 | FINAL FINDINGS OF FACT,  
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1 and advised that a Notice of Violation would be issued. Mr. Cabodi  
2 suggested he contact Mike Cole, of Long Painting Company.

3 III

4 The inspector then contacted Mike Cole of Long Painting Co. by  
5 telephone on October 18, 1982. On October 19, 1982, the inspector met  
6 with Mike Cole and inspected the blasting operation. Rust and paint  
7 scales ruffled the surface areas where blasting had not yet taken  
8 place. The vessel had been abrasively blasted with a #2 Black Diamond  
9 Grit and was approximately 70 to 75 percent completed.

10 IV

11 On October 19, 1982, a Notice of Violation No. 18884 citing  
12 violation of 9.15(a) of Regulation I of the Puget Sound Air Pollution  
13 Control Agency was mailed to Long Painting Co. On November 29, 1982,  
14 a Notice of Civil Penalty No. 5676 in the amount of \$250 was mailed to  
15 Long Painting Company.

16 V

17 Pursuant to RCW 43.21B.260, respondent has filed with the Board a  
18 certified copy of its regulation and amendments thereto which are  
19 noticed.

20 Section 9.15a provides:

21 It shall be unlawful for any person to cause or  
22 permit particulate matter to be handled, transported  
23 or stored without taking reasonable precautions to  
prevent the particulate matter from being airborne.

24 Section 3.29 provides for a fine not to exceed \$250 per day for  
25 each violation.

26 FINAL FINDINGS OF FACT,  
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1 VI

2 Any Conclusion of Law which should be deemed a Finding of Fact is  
3 hereby adopted as such.

4 From these Findings the Board enters these

5 CONCLUSIONS OF LAW

6 I

7 Respondent established a prima facie case under Section 9.15(a)  
8 when it showed that a person has caused particulate matter to become  
9 airborne. Respondent made such a showing for the event occurring on  
10 October 16, 1982. The burden of presenting evidence then shifts to  
11 appellant to show that reasonable precautions were taken. Appellant  
12 Long Painting Co.'s evidence was not sufficient in this instance and  
13 under the facts of this case to show that reasonable precautions were  
14 taken. Accordingly, there was a violation of Section 9.15(a) as  
15 alleged, and the civil penalty No. 5676, which is reasonable in amount,  
16 should be affirmed.

17 II

18 Although appellant used an acceptable abrasive material, it should  
19 have scraped the heavily rusty, scaly areas by hand prior to abrasive  
20 blasting as a reasonable precaution to preventing a violation.  
21 Removal in such a manner would have reduced the emissions into the  
22 atmosphere.

23 III

24 Any Finding of Fact which should be deemed a Conclusion of Law is  
25 hereby adopted as such.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
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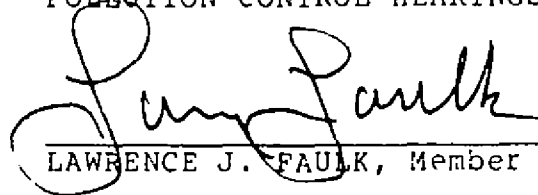
1 From these Conclusions the Board enters this


2 ORDER

3 Civil Penalty No. 5676 assessed on Long Painting Company, Inc., is  
4 affirmed.

5 DONE at Lacey, Washington, this 17<sup>th</sup> day of January, 1983.

6 POLLUTION CONTROL HEARINGS BOARD

7   
8 LAWRENCE J. FAULK, Member

9  
10   
11 GAYLE ROTHROCK, Chairman

12  
13   
14 DAVID AKANA, Lawyer Member